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UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

IN RE CALIFORNIA BAIL BOND
ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:
ALL ACTIONS,

Master Docket No. 19-CV-00717-JST

**DEFENDANTS' REPLY IN SUPPORT OF
MOTION FOR A PROTECTIVE ORDER
TEMPORARILY STAYING DISCOVERY
PENDING RESOLUTION OF MOTIONS
TO DISMISS, AND MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: September 18, 2019

Time: 2:00 p.m.

Location: Courtroom 6, 2nd Floor

Judge: The Honorable Jon S. Tigar

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TABLE OF CONTENTS

	Page
ARGUMENT	1
A. THE COURT SHOULD RESOLVE THE MOTIONS TO DISMISS BEFORE DISCOVERY PROCEEDS.	1
B. THIS COURT HAS AMPLE AUTHORITY TO STAY DISCOVERY.....	2
C. PLAINTIFFS’ RHETORIC IS MISPLACED.....	3
CONCLUSION	4

1
2
3
4
5
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8
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18
19
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TABLE OF AUTHORITIES

Page(s)

CASES

Bell Atlantic Corp. v. Twombly,
550 U.S. 544 (2007)3

Camacho v. United States,
2014 WL 12026059 (S.D. Cal. Aug. 15, 2014)1

In re Nexus 6p Prods. Liability Litig.,
2017 WL 3581188 (N.D. Cal. Aug. 18, 2017).....1

Mlejnecky v. Olympus Imaging Am., Inc.,
2011 WL 489743 (E.D. Cal. Feb. 7, 2011)1

Optronic Techs., Inc. v. Ningbo Sunny Elec. Co., Ltd.,
2018 WL 1569811 (N.D. Cal. Feb. 16, 2018).....3

San Francisco Tech. v. Kraco Enters.,
2011 U.S. Dist. LEXIS 59933 (N.D. Cal. June 6, 2011)3

Singh v. Google, Inc.,
2016 WL 10807598 (N.D. Cal. Nov. 4, 2016).....3

Yiren Huang v. Futurewei Techs., Inc.,
2018 WL 1993503 (N.D. Cal. Apr. 27, 2018)2, 4

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs' response to the Motion to Stay Discovery is without merit. The heart of their
3 response previews some of their forthcoming oppositions to the motions to dismiss and thus
4 confirms that the most sensible use of resources at this time is to resolve whether this case should
5 proceed at all. The rest of Plaintiffs' response consists of (i) unpersuasive boilerplate disputing
6 whether discovery should ever be stayed (when ample authority holds that staying discovery is
7 within the Court's sound discretion) and dismissing the Supreme Court's warnings about the
8 burdens of discovery in antitrust cases; and (ii) overheated rhetoric that has nothing to do with
9 preservation issues and that makes a dramatic and unsubstantiated leap that evidence may be lost
10 (notwithstanding the stipulated preservation order) based on nothing more than rank speculation.

11 **ARGUMENT**

12 **A. The Court Should Resolve the Motions to Dismiss Before Discovery Proceeds.**

13 The first order of business in this case should be to resolve the pending motions to dismiss,
14 with the hearing set for October 16, 2019. Defendants respectfully decline the Plaintiffs' invitation
15 for a protracted debate in this briefing on the merits of those motions. It suffices to say that the
16 Consolidated Amended Complaint ("CAC") fails for multiple independent reasons, including (i)
17 numerous dispositive grounds connected to the complex regulatory scheme overseen by the
18 California Department of Insurance; (ii) the CAC's wholesale failure to allege a single fact showing
19 any agreement among the Defendants to fix prices related to any aspect of bail bond pricing (and
20 no actionable facts of *any* kind, let alone "conspiratorial" ones, for the majority of Defendants);
21 and (iii) the outright implausibility of the CAC's allegations.

22 Plaintiffs are incorrect to the extent they are suggesting that a party seeking to stay discovery
23 must show a likelihood of success on the merits of a pending dispositive motion when seeking a
24 stay of discovery. In exercising its discretion, the Court at most need take only a "preliminary
25 peek" at the merits of the motions to dismiss, recognize that they are potentially dispositive, and
26 find a "clear possibility" or a "strong showing" that the motions will be granted. *See, e.g., Camacho*
27 *v. United States*, 2014 WL 12026059, at *4 (S.D. Cal. Aug. 15, 2014); *Mlejnecky v. Olympus*
28 *Imaging Am., Inc.*, 2011 WL 489743, at *5-8 (E.D. Cal. Feb. 7, 2011); *In re Nexus 6p Prods.*

1 *Liability Litig.*, 2017 WL 3581188, at *1 (N.D. Cal. Aug. 18, 2017). Even a cursory glance at
2 Defendants' motions shows they present strong arguments that would be entirely dispositive. It is
3 notable that, while previewing their (weak) responses to Defendants' dismissal arguments that are
4 grounded on the comprehensive regulatory framework, Plaintiffs provide no explanation as to how
5 the CAC could possibly survive the other asserted grounds for dismissal, including the absence of
6 any factual allegations supporting their ill-defined conspiracy claim. The first order of business
7 therefore should be to determine whether this case should go forward at all, not to dive headfirst
8 into discovery that Plaintiffs themselves contend will be substantially burdensome (see below).

9 **B. This Court Has Ample Authority to Stay Discovery.**

10 Plaintiffs merely offer boilerplate case law for the unremarkable proposition that there is a
11 general "aversion" against staying discovery. (Opp. at 2-4.) There is no question that the Court
12 can order a stay, a stay is appropriate in many situations, and overseeing the timing and sequence
13 of discovery is a matter for the Court's discretion. (ECF 59 at 2-4.) *See Yiren Huang v. Futurewei*
14 *Techs., Inc.*, 2018 WL 1993503, at *2 (N.D. Cal. Apr. 27, 2018) (staying discovery pending
15 resolution of a motion is proper where the "pending motion [is] potentially dispositive ... [and if]
16 the pending motion can be decided absent discovery").

17 Plaintiffs nonetheless contend that Defendants have not offered any independent grounds
18 to support the requested stay and have relied solely on the point that this is an antitrust case. (Opp.
19 at 3.) But Plaintiffs forget their own allegations and the scope of the discovery requests they have
20 served. Based on their CAC, the case involves thirty defendants and unknown actors within those
21 defendants, potentially over 3,000 unnamed bail agents, hundreds of thousands of purported class
22 members, some ill-defined multi-dimensional conspiracy, and a relevant period supposedly lasting
23 fifteen years. According to Plaintiffs' April 5 discovery letter (ECF 62-1), they seek "all documents
24 ... without regard to time period, custodian category, or format of documents or ESI" regarding 43
25 categories, some with as many as 16 subparts, including "bail bond premiums" and "bail bond
26 pricing." Their requests further seek discovery from 16 surety Defendants against whom there are
27 no factual allegations at all other than their place of incorporation, principal place of business, and

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1 agent for service. (ECF 58 at 9-10.) Plaintiffs thus aim to establish exceptionally burdensome
2 discovery parameters.

3 Plus it *is* important that this is an antitrust case. The Supreme Court has cautioned against
4 “proceeding to antitrust discovery” because of the “unusually high cost” and “extensive scope of
5 discovery” where allegations involved a large putative class, defendants had many employees who
6 generated large amounts of business records, and the complaint asserts “unspecified [] instances of
7 antitrust violations that allegedly occurred over a period of [several] years.” *Bell Atlantic Corp. v.*
8 *Twombly*, 550 U.S. 544, 558 (2007) (citations omitted). These are the very circumstances alleged
9 here, where the need for this Court’s gatekeeping function could not be clearer.

10 At bottom, whether the Court should stay discovery is grounded less in precedential nuances
11 and more in the sensible exercise of judicial discretion. It nevertheless bears mentioning that
12 Plaintiffs cite to inapposite case law that does not undermine the similarity and applicability of
13 *Twombly*. For example, in *San Francisco Tech. v. Kraco Enters.*, 2011 U.S. Dist. LEXIS 59933,
14 at * 5 (N.D. Cal. June 6, 2011), the court sought to advance litigation after one amended pleading,
15 more than a year of litigation, and where “the discovery sought ... [was] neither oppressive nor
16 burdensome ... not extensive, and [was] tailored to the limited issues presented.” In *Singh v.*
17 *Google, Inc.*, 2016 WL 10807598, at *1 (N.D. Cal. Nov. 4, 2016), defendants failed to offer a
18 particularized showing of discovery burden and the stay motion assumed that an amendment could
19 not cure deficiencies in the complaint. Contrary to Plaintiffs’ argument, *Optronic Techs., Inc. v.*
20 *Ningbo Sunny Elec. Co., Ltd.*, 2018 WL 1569811, at *1 (N.D. Cal. Feb. 16, 2018), is not analogous.
21 While it was an antitrust case, it was a narrow individual action against a single company and two
22 subsidiaries over a short period, not a massive putative class suing thirty defendants for a fifteen-
23 year period in a comprehensively regulated industry.

24 **C. Plaintiffs’ Rhetoric Is Misplaced.**

25 Plaintiffs’ response contains sensationalistic rhetoric about “unscrupulous bail agents”
26 (Opp. at 2), evidently trying to convince the Court that some unidentified agents have (according
27 to Plaintiffs) supposedly negative industry reputations and therefore that there must be some kind
28 of special need to be concerned about spoliation here. Insults aside, Plaintiffs offer no facts—

1 none—supporting any spoliation concern related to their complaint of price fixing, just as the CAC
2 offers no facts showing any conspiracy (or anything at all about many Defendants). Launching
3 personal attacks untethered to actionable facts does not establish a basis for concern that evidence
4 of a price-fixing conspiracy will be lost (let alone in a heavily regulated industry like this one).

5 Even if Plaintiffs had identified some actual basis for concern, the parties already stipulated
6 and the Court ordered preservation of all potentially relevant evidence. (ECF 29 at 4 (ordering
7 “each party [to] take reasonable steps to preserve all documents, data, and tangible things
8 containing information potentially relevant to the subject matter of this litigation”).) Plaintiffs
9 argue that a statement in the Motion to Stay “leads Plaintiffs to question whether [Defendants] are
10 properly preserving evidence.” (Opp. at 7.) But Plaintiffs misunderstand or misconstrue
11 Defendants’ statement about the inherent burdens of collecting and processing documents *for*
12 *production*, as opposed to *preservation*.

13 Plaintiffs’ own authority also cuts against proceeding with discovery where there is no
14 meaningful concern of spoliation. In *Yiren Huang*, 2018 WL 1993503, at *4, the court found a stay
15 would result in no prejudice where “[t]here [wa]s minimal concern on evidence preservation
16 [because] the parties [] represented that they have taken steps to preserve relevant information [and
17 n]either party identifies evidence that is particularly vulnerable to spoliation.” Plaintiffs identify
18 no evidence that is vulnerable to spoliation and offer no reason why the stipulated order no longer
19 provides protection.

20 Plaintiffs’ alternative argument that “Defendants should provide the information required
21 in the 26(f) Checklist” (*i.e.*, participate in discovery) (Opp. at 7), is equally unavailing. At this
22 juncture, a meaningful discussion about sources of discovery is impossible given the CAC’s lack
23 of factual allegations and internal confusion about the nature of the alleged conspiracy. (See ECF
24 56 at 15-16.) All aspects of discovery thus should await resolution of the Motions to Dismiss.

25 CONCLUSION

26 Defendants respectfully request that the Court issue an order temporarily staying discovery.

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28 /////

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